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1 A bill to be entitled

2 An act relating to rules of evidence; amending s. 90.104,
3 F.S.; specifying circumstances in which claims of error
4 relating to evidence admitted or excluded at trial are
5 preserved for appeal; amending s. 90.803, F.S.; revising
6 conditions under which certain records of regularly
7 conducted business activity are admissible; amending s.
8 90.902, F.S.; providing for circumstances in which
9 evidence accompanied by a certification or declaration
10 made by a records custodian or another qualified person
11 does not require extrinsic evidence of authenticity as a
12 condition precedent to admissibility; providing an
13 effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Subsection (1) of section 90.104, Florida
18 Statutes, is amended to read:

19 90.104 Rulings on evidence.--

20 (1) A court may predicate error, set aside or reverse a
21 judgment, or grant a new trial on the basis of admitted or
22 excluded evidence when a substantial right of the party is
23 adversely affected and:

24 (a) When the ruling is one admitting evidence, a timely
25 objection or motion to strike appears on the record, stating the
26 specific ground of objection if the specific ground was not
27 apparent from the context; or

28 (b) When the ruling is one excluding evidence, the
29 substance of the evidence was made known to the court by offer



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30 of proof or was apparent from the context within which the
 31 questions were asked.

32
 33 If the court has made a definitive ruling on the record
 34 admitting or excluding evidence, at or before trial, a party
 35 need not renew an objection or offer of proof to preserve a
 36 claim of error for appeal.

37 Section 2. Subsection (6) of section 90.803, Florida
 38 Statutes, is amended to read:

39 90.803 Hearsay exceptions; availability of declarant
 40 immaterial.--The provision of s. 90.802 to the contrary
 41 notwithstanding, the following are not inadmissible as evidence,
 42 even though the declarant is available as a witness:

43 (6) RECORDS OF REGULARLY CONDUCTED BUSINESS ACTIVITY.--

44 (a) A memorandum, report, record, or data compilation, in
 45 any form, of acts, events, conditions, opinion, or diagnosis,
 46 made at or near the time by, or from information transmitted by,
 47 a person with knowledge, if kept in the course of a regularly
 48 conducted business activity and if it was the regular practice
 49 of that business activity to make such memorandum, report,
 50 record, or data compilation, all as shown by the testimony of
 51 the custodian or other qualified witness, or as shown by a
 52 certification or declaration that complies with paragraph (c)
 53 and s. 90.902(11), unless the sources of information or other
 54 circumstances show lack of trustworthiness. The term "business"
 55 as used in this paragraph includes a business, institution,
 56 association, profession, occupation, and calling of every kind,
 57 whether or not conducted for profit.

58 (b) ~~No~~ Evidence in the form of an opinion or diagnosis is
 59 inadmissible ~~admissible~~ under paragraph (a) unless such opinion



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60 or diagnosis would be admissible under ss. 90.701-90.705 if the
61 person whose opinion is recorded were to testify to the opinion
62 directly.

63 (c) A party intending to offer evidence under paragraph
64 (a) by means of a certification or declaration shall serve
65 reasonable written notice of that intention upon every other
66 party and shall make the evidence available for inspection
67 sufficiently in advance of its offer in evidence to provide to
68 any other party a fair opportunity to challenge the
69 admissibility of the evidence. If the evidence is maintained in
70 a foreign country, the party intending to offer the evidence
71 must provide written notice of that intention at the arraignment
72 or as soon after the arraignment as is practicable or, in a
73 civil case, 60 days before the trial. A motion opposing the
74 admissibility of such evidence must be made by the opposing
75 party and determined by the court before trial. A party's
76 failure to file such a motion before trial constitutes a waiver
77 of objection to the evidence but the court for good cause shown
78 may grant relief from the waiver.

79 Section 3. Subsection (11) is added to section 90.902,
80 Florida Statutes, to read:

81 90.902 Self-authentication.--Extrinsic evidence of
82 authenticity as a condition precedent to admissibility is not
83 required for:

84 (11) An original or a duplicate of evidence that would be
85 admissible under s. 90.803(6), which is maintained in a foreign
86 country or domestic location and is accompanied by a
87 certification or declaration from the custodian of the records
88 or another qualified person, certifying or declaring that the
89 record:



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90 (a) Was made at or near the time of the occurrence of the
91 matters set forth by, or from information transmitted by, a
92 person having knowledge of those matters;

93 (b) Was kept in the course of the regularly conducted
94 activity; and

95 (c) Was made as a regular practice in the course of the
96 regularly conducted activity,

97
98 provided that falsely making such a certification or declaration
99 would subject the person making the certification or declaration
100 to criminal penalty under the laws of the foreign or domestic
101 location in which the certification or declaration was signed.

102 Section 4. This act shall take effect July 1, 2003.